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No. 07-968

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In The

Supreme Court of the United States

MANUEL GOMEZ,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The First District Court Of Appeal For The State Of Florida

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 44, RULES OF THE SUPREME COURT

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GROUND FOR GRANTING REHEARING

ARIZONA v. GANT IS AN INTERVENING CIRCUMSTANCE OF SUBSTANTIAL EFFECT JUSTIFYING REHEARING.

Petitioner Manuel Gomez requests rehearing of the order dated March 31, 2008 denying the requested writ of certiorari based on an intervening circumstance of a substantial or controlling effect and other substantial grounds not previously presented.

Gomez's petition presents three interrelated questions:

I. AS SUGGESTED IN *DICTA* IN *THORNTON v. UNITED STATES*, 541 U.S. 615, 124 S.Ct. 2127 (2004), THE THIRTY-MINUTE DELAY BETWEEN ARREST AND SEARCH, CONDUCTED AFTER THE PASSENGER IN GOMEZ'S CAR WAS ARRESTED, HANDCUFFED AND IN THE BACK OF THE PATROL CAR, TOOK THIS SEARCH OUTSIDE THE SAFE HARBOR OF *NEW YORK v. BELTON*, 453 U.S. 454, 101 S.Ct. 2860 (1981), BECAUSE THE SEARCH WAS NOT DONE CONTEMPORANEOUSLY WITH THE ARREST, AS REQUIRED BY *BELTON*.

II. *COOLIDGE v. NEW HAMPSHIRE*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971), PRECLUDES THE SEARCH OF AN AUTOMOBILE RECENTLY OCCUPIED BY AN ARRESTED

PERSON WHERE THE EXIGENCY FOR THE SEARCH IS CREATED BY THE STATE.

III. *BELTON* MUST BE HARMONIZED WITH *TERRY v. OHIO,* 392 U.S. 1, 88 S.Ct. 1868 (1968), AND ITS PROGENY, WHICH INVALIDATE SUBSEQUENT POLICE CONDUCT TAINTED BY AN ILLEGAL OR ILLEGALLY PROLONGED DETENTION, AND SUCH HARMONIZATION WOULD NOT PERMIT THE CONTINUED ILLEGAL DETENTION OF GOMEZ AND HIS AUTOMOBILE AFTER THE PASSENGER WAS ARRESTED, HANDCUFFED, AND LOCKED IN THE REAR OF THE PATROL VEHICLE AND WOULD RENDER THE DELAYED SEARCH "INCIDENT" TO THE PASSENGER'S ARREST UNREASONABLE FOR PURPOSES OF *BELTON*'S CONTEMPORANEITY REQUIREMENT.

Gomez's petition was docketed January 24, 2008. Gomez was not aware of the pending petition for certiorari in *Arizona v. Gant*, No. 07-542, at the time Gomez filed his petition for certiorari and his petition does not reference *Arizona v. Gant*. However, after Gomez filed his petition for certiorari, this Court granted certiorari in *Arizona v. Gant* on February 25, 2008, and stated in its order the following:

> Petition GRANTED limited to the following Question: Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after

> the vehicle's recent occupants have been arrested and secured?

Arizona v. Gant, ___ S.Ct. ___, 2008 WL 482034, 76 USLW 3451, 76 USLW 3454, 76 USLW 3226 (February 25, 2008).

Gomez's petition raises substantially the same question as *Arizona v. Gant*. It appears that the forthcoming decision in *Arizona v. Gant* would control questions I and III presented in Gomez's petition. We would respectfully request that the Court revisit the decision to deny certiorari and hold Gomez's petition pending the decision in *Arizona v. Gant*, at which point the petition would either be denied or granted, vacated and remanded for further consideration of the *Arizona v. Gant* decision by the Florida First District Court of Appeal.

Clearly Gomez cannot forecast the Court's decision in *Arizona v. Gant*, although *dicta* in *Thornton v. United States*, 541 U.S. 615, 124 S.Ct. 2127 (2004), might foreshadow the Court's decision, which would be favorable to Gomez. For this reason Gomez argues that his petition should be held pending the decision in *Arizona v. Gant*.

The posture of Gomez's case is similar to that of other cases in which this Court has first denied certiorari, then upon petition for rehearing, held the case pending the decision of what would be a *later* controlling case, after the decision of which it then granted rehearing, granted certiorari, vacated and remanded.

For example, in *Criston v. United States*, 543 U.S. 1117, 125 S.Ct. 1112 (2005), Criston's certiorari petition was denied shortly before *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531 (2004) was decided and before certiorari was granted in *United States v. Booker* on August 4, 2004. *United States v. Booker*, 542 U.S. 956, 125 S.Ct. 11 (2004). Criston filed a petition for rehearing on July 16, 2004 which was first distributed on July 30, 2004. Although certiorari had not yet been granted on *Booker*, this Court held Criston's petition for rehearing until after certiorari was granted and *Booker* was decided, almost six months later. *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005).

CONCLUSION

Gomez's petition for rehearing should be granted and Gomez's petition held pending decision in *Arizona v. Gant*. If petitioner Gant prevails, Gomez's petition should then be granted, and the decision of the Florida First District Court of Appeal vacated and the matter remanded for further consideration in light of *Arizona v. Gant*.

Respectfully submitted,

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Pursuant to Rule 44, Rules of the Supreme Court, counsel hereby certifies that this petition for rehearing is restricted to the grounds specified in Rule 44, paragraph 2, Rules of the Supreme Court, and is being presented in good faith and not for delay.

_____

William Mallory Kent